

Court of Appeals, State of Michigan

ORDER

Lucas Floyd v Detroit Diesel Corp

Docket No. 257805

LC No. 03-000064

Pat M. Donofrio
Presiding Judge

Mark J. Cavanagh

Henry William Saad
Judges

In lieu of granting leave to appeal, the Court orders pursuant to MCR 7.205(D)(2) that the August 10, 2004 order of the Worker's Compensation Appellate Commission (WCAC) is VACATED to the extent it finds that plaintiff cannot perform all jobs paying the maximum wage within his qualifications and training and is therefore entitled to benefits. The matter is REMANDED for reconsideration of the question whether plaintiff is disabled under MCL 418.301(4) as interpreted by *Sington v Chrysler Corp*, 467 Mich 144; 648 NW2d 624 (2002). The WCAC concluded: "the actual job plaintiff performed for this employer was one with two tasks (the cylinder head portion and the drill job portion). As the drill job 'task' was outside plaintiff's physical ability to perform, he was unable to perform all of the jobs with defendant which paid the maximum within his qualifications and training." The WCAC erroneously concluded that because plaintiff could not perform part of his job, he could perform no job at a maximum wage within his qualifications and training. Its finding that plaintiff could perform only one of the two tasks of his job supports only the conclusion that plaintiff cannot perform a single job within his qualifications and training. Our Supreme Court overturned this type of analysis, set forth in *Haske v Transport Leasing, Inc*, 455 Mich 628; 466 NW2d 896 (1997), when it issued *Sington*. On remand, the WCAC "should consider whether the [work related] injury has actually resulted in a loss of wage earning capacity in work suitable to the employee's training and qualifications in the ordinary job market," *Sington, supra* 462 Mich 158, and in doing so, it should consider "the particular work that [plaintiff] is both trained and qualified to perform, whether there continues to be a substantial job market for such work, and the wages typically earned for such employment in comparison to [plaintiff's] wage at the time of the work-related injury." *Id.* at 157. The application for leave to appeal is otherwise DENIED for lack of merit.

The motion to file a late answer is GRANTED.

This Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

FEB - 4 2005

Date

Sandra Schultz Mengel
Chief Clerk